

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 29 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KANTILAL HARIBHAI SHRIMALI

Versus

STATE OF GUJ

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Appearance:

MR PJ YAGNIK for Petitioner  
PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 06/02/97

ORAL JUDGEMENT (per N.J. Pandya, J)

The accused appellant came to be convicted by the learned Additional Sessions Judge, Mehsana in Sessions Case No. 184 of 1988 for offences under Sections 8, 20(b)(2 of Narcotics Drugs and Psychotropic Substances Act, 1985. The learned trial judge proceeded to award

ten years rigorous imprisonment and fine of Rs. one lakh and in default ordered the convict to undergo simple imprisonment for one year.

2. The accused appellant challenged the aforesaid conviction on several grounds. Learned Advocate, Mr. Yagnik appearing for the accused appellant, drew our attention to the deposition of Jinbhai, a constable in Kalol outpost of the railway police station, Sabarmati, that he had received information about this and had gone to inform his superior Head Constable. Neither of them cared to reduce this information into writing nor have they informed the superior officers in this regard.

3. As if it is not enough, when they went at the expected place of arrival of the accused with panchas and stood there waiting for him, on his arrival before taking search, the requirement of Section 50 was not kept in mind. The person is to be searched is to be informed that the search if he so desires can be taken either in presence of a Gazetted Officer or a Magistrate. This has not been done. The Supreme Court in the case of STATE OF PUNJAB VS. BALBIR SINGH reported in 1994 SC 1872 held that this is a mandatory provision. Subsequently in the case of STATE OF H.P. VS. PIRTHI CHAND reported in (1996)2 SCC 37 it is said that if there are other surrounding circumstances, this violation alone will not help the defence. There are no surrounding circumstances and therefore the order of conviction cannot be sustained.

4. The appeal is therefore allowed. The order of conviction and sentence is set aside. The accused-appellant is ordered to be set at liberty, if not required for any other. Fine, if paid, is ordered to be refunded. Direct service permitted.

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